

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SHERRY LEE CRUZ,)
Petitioner,) Civil Action No. 7:16cv00318
)
v.) **MEMORANDUM OPINION**
)
TAMMY BROWN,)
Respondent.) By: Norman K. Moon
) United States District Judge

Petitioner Sherry Lee Cruz, a Virginia inmate proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging her 2014 conviction in the Winchester Circuit Court. Having reviewed the petition and state court online records, I conclude that Cruz has not fully exhausted her state court remedies before filing this federal habeas petition and, therefore, will dismiss her petition without prejudice.

On June 30, 2014, the Winchester Circuit Court convicted Cruz of first degree murder, arson, four counts of child neglect, and violating her terms of probation, and sentenced her to 32 active years of incarceration. The Court of Appeals of Virginia dismissed her appeal on October 20, 2015. Cruz then appealed to the Supreme Court of Virginia and her appeal is still pending in that court. *Cruz v. Commonwealth*, Case No. 151667 (Va. Nov. 2, 2015). While her direct appeal was pending, Cruz filed a petition for writ of habeas corpus in the Winchester Circuit Court and that petition is also still pending. *Cruz v. Abrams*, Case No. CL16000111-00 (Va. Cir. Mar. 11, 2016).

A federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which she was convicted. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). If the petitioner has failed to exhaust state court remedies, the federal court must dismiss the petition. *Slayton v. Smith*, 404 U.S. 53 (1971). In Virginia, a non-death row

felon ultimately must present her claims to the Supreme Court of Virginia and receive a ruling from that court before a federal district court may consider her claims. *See* Va. Code § 8.01-654. In this case, it is clear that Cruz has not finished exhausting her state court remedies before filing this action and, therefore, I will dismiss her habeas petition without prejudice.

ENTER: This 13th day of July, 2016.


NORMAN K. MOON
UNITED STATES DISTRICT JUDGE